

IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NUMBER 624 OF 2010

BETWEEN:

ZIONE NTABA (As Executor of the Will and Estate of the Late George  
Maurice Justice Ntaba)-----PLAINTIFF

AND

COMMISSIONER FOR LANDS-----1<sup>ST</sup> DEFENDANT

MAXWELL NTABA-----2<sup>ND</sup> DEFENDANT

JEAN NTABA (MRS HAMITONI)-----3<sup>RD</sup> DEFENDANT

EMILY NTABA-----4<sup>TH</sup> DEFENDANT

WILLIAM CHILINDA NTABA-----5<sup>TH</sup> DEFENDANT

ALICE NAMATA-----6<sup>TH</sup> DEFENDANT

AND

IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
PROBATE CAUSE NUMBER 69 OF 2010

IN THE MATTER OF GEORGE MAURICE JUSTICE NTABA (DECEASED)  
AND IN THE MATTER OF AN APPLICATION BY MAXWELL NTABA, JEAN  
NTABA, EMILY NTABA, WILLIAM CHILINDA NTABA FOR LIMITED  
GRANT OF LETTERS OF ADMINISTRATION (Consolidated by Order of  
the Supreme Court MSCA number 5 of 2012)

**CORAM: HON. JUSTICE M.C.C. MKANDAWIRE**

**Chiume, Counsel for the Plaintiff**

**Kadzakumanja/Chinyama, Counsel for the Defendants**

**Mrs Namagonya, Court Reporter**

**Itai, Court Interpreter**

### **JUDGMENT**

The plaintiff applied to the court to revoke the grant of letters of administration that were granted under probate cause number 69 of 2010 to Maxwell Ntaba, Jean Ntaba, Emilly Ntaba and William Chilinda Ntaba in respect of title number Alimaunde 12/124 in Lilongwe. This matter commenced through an originating summons dated 18<sup>th</sup> November 2010. There is an affidavit in support of the summons deposed by Zione Jane Veronica Ntaba.

The plaintiff is the Executor of the Estate of the late George Maurice Justice Ntaba. She is also the daughter of the late George Maurice Justice Ntaba who died on 21<sup>st</sup> of December 1990. The said Late George Maurice Justice Ntaba left a legally valid Will which is part of the evidence attached to the affidavit marked 'ZJVN1'. The Administrator general and Dr Hetherwick Maurice Ntaba were appointed as Executors and Trustees of this Will from 1991.

On 17<sup>th</sup> of February 2009, the plaintiff was appointed an Administrator of the Estate of the late George Maurice Justice Ntaba substituting Dr Hetherwick Maurice Ntaba and the Administrator General. A copy of the court order appointing the plaintiff as the Administrator is attached to the affidavit in support (P Ext 1) as 'ZJVN2'. After being appointed an Administrator the plaintiff embarked on an inquiry into the affairs of the deceased Estate. One of the properties the deceased had left covered by the Will was a house situated at Title Number Alimaunde 12/124 in Lilongwe. On the 24<sup>th</sup> of June 2010, the plaintiff registered a caution with the 1<sup>st</sup> defendant claiming interest in the said title and forbidding the registration of any dealings and making of any entries thereon without the authority of the plaintiff's consent or notice. The caution is attached to P Ext 1 as 'ZJVN3'. On 20<sup>th</sup> July 2010 the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> defendants obtained

letters of Administration with Limited Grant in Probate Cause Number 69 of 2010 allowing them to administer Title Number Alimaunde 12/124. The court order is attached to P Ext 1 as 'ZJVN'. In obtaining the letters of Administration with Limited Grant, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants did not disclose to the court that there was a caution in force. The plaintiff in her affidavit submitted that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants did not make frank disclosures to the court namely:

- (i) That there was already an Executor in charge of the Estate.
- (ii) Misrepresented to the court that the house had been given to them and that they owned it yet the said property was never transferred to them.
- (iii) Lied that they had forfeited part of their inheritance in lieu of the said property stipulated in the Will.

The plaintiff said that there is no evidence on record to show that the previous Executors had transferred the property Alimaunde 12/124 to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants.

Upon obtaining letters of Administration the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants registered themselves as proprietors of Title Number Alimaunde 12/124 as shown in exhibit 'ZJVN7'. The defendants later sold the house to Alice Namata the 6<sup>th</sup> defendant. The plaintiff therefore says that the letters of Administration were obtained fraudulently and by means of false allegations of fact. These letters of Administration are therefore void ab initio.

The 1<sup>st</sup> defendant filed a very brief affidavit in response to this matter. In a nutshell, the 1<sup>st</sup> defendant says that it will be willing to abide by any order that this court may make.

The 2<sup>nd</sup> to 6<sup>th</sup> defendants through an affidavit said that since the death of their late brother George Maurice Justice Ntaba in 1990, the estate was administered by the Administrator General and Dr Hetherwick Ntaba who were appointed by the deceased in his Will. The defendants said that they were not informed about the plaintiff that she was the new Administrator and only learnt about it after they had already obtained Letters of Administration Limited to the administration of the plot on Title Number Alimaunde 12/124. The defendants aver that the plaintiff did not at all involve them in the inquiries that were done at the Lands Department. It is their case that the Plot on Alimaunde 12/124 was already dealt with by the previous Administrators and had the plaintiff made consultations with

the previous Administrators, she could not have registered a caution. The defendants said that they had made all the disclosure that was required before they obtained the Letters of Administration. The defendants said that as per the consultations between the mother to the plaintiff, the Administrators and the defendants the estate was properly shared amongst the beneficiaries and that the house in issue was given to the mother to the deceased. The defendants tendered the mortgage loan which they had to clear in respect of the plot in issue. The mortgage loan accounts were tendered as exhibit 'EM3'. The defendants therefore say that as proof that the plot in issue was transferred to them by the previous Administrators, the defendants were collecting the rentals from the house at Plot Alimaunde 12/124.

Dr Hetherwick Ntaba one of the Executors and Trustees of the Estate filed an affidavit. It is very clear from the affidavit that in administering the Will of the deceased, the Executors and Trustees were to be guided by clause 5 of the Will. According to clause 5 of the said Will, all the residuary estate was devised and bequeathed to the Executors of the said Will upon trust to sell, call in and convert into money and out of the said money to divide the remainder of the said residuary estate in the proportions that were provided for as follows:

1. 60% to children including the plaintiff
2. 10% to his wife Phyllis Ntaba
3. 5% each to his brothers Maxwell Ntaba and William Chilinda Ntaba and his sisters Jean Ntaba and Emily Ntaba.
4. 10% to his mother Ida Ntaba.

The Alimaunde plot had a charge and as such as per clause 5 as read with clause 6 of the Will they could not transfer the property to any beneficiary.

It is the evidence of Dr Ntaba through the affidavit deponed by him that through consultations between the Executors and the deceased's wife and other beneficiaries it was resolved that the properties in Blantyre should be given to the deceased's widow and children representing 70% of the Estate. This decision was arrived at considering that there were no encumbrances on the said properties so that the widow and the children could start benefiting immediately. The Alimaunde plot subject of this matter was given to the mother of the deceased and the brothers and sisters representing 30% of the estate. This was done so

that the mother and her children could wait and service the mortgage loan through the rentals from the house on the said plot and start benefiting after clearing the mortgage loan. The loan was accordingly cleared in 1999 and thereafter the family started receiving the rentals.

I have gone through all the affidavits that were filed by the plaintiff's side. I have also gone through the affidavits that were filed by the defendants. In doing that, I have been assessing the questions and answers that were exchanged during the time the plaintiff and one of the defendants gave oral evidence in the court. I would actually have loved if the first Executors and Trustees of the Will of the deceased were subjected to the same exercise that the plaintiff and one of the defendants underwent. It is unfortunate that Dr Hetherwick Ntaba only filed an affidavit in opposition to the application herein. I thought that he was very central to this case together with the Administrator General who were the first Trustees.

The genesis of this matter is actually the Will of the deceased. It is fundamental to put it on record that the Will of the deceased has to prevail. Therefore clauses 5 and 6 of the said Will are extremely relevant. After having gone through all the evidence that was presented before me, I find that what happened to Plot Alimaunde 12/124 was contrary to what was in clause 6 of the Will. For avoidance of doubt, clause 6 provided as follows:

**"THE EXECUTORS** shall not in so far as part of my residuary estate comprise houses or other real property on which a mortgage and other charge duly recognized in law shall be subsisting sell or convert any such part of the residuary estate but instead they shall stand possessed of any residuary estate and income there from upon trust towards the maintenance and repair thereof and in the payment of any mortgage instalments rates outgoings and the net income or capital thereof upon the trust declared under the provisions of clause 5 of the Will".

The Executors of the Will who were Dr Hetherwick Ntaba and the Administrator General had violated clause 6 if at all they had given Plot Alimaunde 12/124 to the 2<sup>nd</sup> to 5<sup>th</sup> defendants. It is also very clear from the evidence on record that the 2<sup>nd</sup> to 5<sup>th</sup> defendants have no scintilla of evidence to show that Phyllis Ntaba widow of the deceased was involved in any discussions involving Plot Alimaunde 12/124 as the defendants would like this court to believe. When confronted during cross-

examination, Mrs Mollande who was the deponent on behalf of other defendants confessed that she had no evidence to show to this court that there was consent from the widow. It was therefore very strange that such a serious issue could not even have any documented proof. It is again very strange that Plot Alimaunde 12/124 could be given to the four defendants without any evidence of transfer of the property by the Executors of the Will yet the same Executors had formally transferred the Likhubula 539 in the city of Blantyre on 20<sup>th</sup> of October 2006 and that there is documentary evidence to that effect. What could have prevented the Executors from doing the same with Plot Alimaunde 12/124. The only explanation here is that there was no such transfer. This was just an afterthought. When I looked at the affidavit of Dr Hetherwick Ntaba, I was of the strong view that it lacked seriousness and was not made in good faith. Dr Ntaba knew that Zione Ntaba had replaced the Executors as new Administrator of the estate. It is however strange that Dr Ntaba did not inform the 2<sup>nd</sup> to 5<sup>th</sup> defendants about this change yet it was incumbent upon him to do that. I find that the defendants deliberately filed an application before the High Court applying for Letters of Administration of Plot Alimaunde 12/124 knowing very well at that time that there was already Zione Ntaba as the new Administrator.

Having given the case the best of its scrutiny, I make the following findings:

- (i) The letters of Administration with a Limited Grant which were obtained by the 2<sup>nd</sup> to 5<sup>th</sup> defendants be revoked because they were obtained fraudulently on the basis of untrue statements of facts.
- (ii) The decision by the Commissioner of Lands through the Lands Registrar in registering the 2<sup>nd</sup> to 5<sup>th</sup> defendants as the proprietors of Title Number Alimaunde 12/124 when there was an existing caution prohibiting the same was unlawful and therefore void.
- (iii) The court does order that the Land Registrar should with immediate effect cause the rectification of the Land Register by cancelling the 2<sup>nd</sup> to the 5<sup>th</sup> defendants as Proprietors of Title Number Alimaunde 12/124.
- (iv) The 1<sup>st</sup> defendant could therefore not register or cause to be registered a transfer of title to the 6<sup>th</sup> defendant Alice Namata.

I further grant all the declarations and orders as prayed for in the originating summons in case they have not been well captured in paragraphs (i) to (iv) above. The defendants are condemned to pay costs of these proceedings.

**DELIVERED THIS 16TH DAY OF JUNE 2017 AT LILONGWE**



**M.C.C. MKANDAWIRE**

**JUDGE**